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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,594	01/25/2005	Tomokazu Kumeuchi	Q85900	3445
23373	7590	07/25/2008	EXAMINER	
SUGHRUE MION, PLLC			WEINER, LAURA S	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20037			1795	
			MAIL DATE	DELIVERY MODE
			07/25/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/522,594	KUMEUCHI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	/Laura S. Weiner/	1795	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 May 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-25-05; 11-13-06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election without traverse of Group II, claims 2-10 in the reply filed on 5-30-08 is acknowledged. Claim 3 which is amended was also examined.
  
2. Claim 11 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5-30-08.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 2-10 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for  $\text{Li}_{1+x}\text{Mn}_2-x\text{O}_4$ , does not reasonably provide enablement for "a compound in which some of Mn or O sites are replaced with another element". The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-10 rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kitao et al. (CN 1484336)[using US 2004/0110064 as translation].

Kitao et al. teaches a battery comprising a positive electrode, a negative electrode and a nonaqueous electrolyte solution. The positive electrode active material is a mixture of lithium manganese composite oxide and at least one of lithium-nickel composite oxide (LiCobM<sub>21-b</sub>O<sub>2</sub>, where M<sub>2</sub>=Ni]. Kitao et al. teaches on page 1, [0012], that the electrolyte solution contains at least a saturated cyclic carbonic acid ester. Kitao et al. teaches on page 2, [0013], that the positive active material has a BET

specific surface area in the range of 0.2 to 10 m<sup>2</sup>/g. Kitao et al. teaches on page 3, [0029-0030], that the positive electrode comprises LiNi0.4Co0.3Mn0.3O<sub>2</sub> and Li<sub>1.15</sub>Mn<sub>1.85</sub>O<sub>3</sub> in a ratio of 1:1 and that the positive electrode further includes carbon and a polyvinylidene fluoride binder. Kitao et al. teaches on page 3, [0032], that the electrolyte comprises EC, DEC and LiPF<sub>6</sub>.

Since Kitao et al. teaches the same battery comprising a positive electrode having the same active material comprising lithium manganese composite oxide and at least one of lithium-nickel composite oxide, a negative electrode and an electrolyte then inherently the same battery which contains a Mn elution amount when immersing the particles in a mixture of an electrolyte salt and a carbonate solvent is 1000 ppm or less must also be obtained.

In addition, the presently claimed property of a Mn elution amount when immersing the particles in a mixture of an electrolyte salt and a carbonate solvent is 1000 ppm or less would have obviously have been present once the Kitao et al. product is provided. *In re Best*, 195 USPQ 433 (CCPA 1977).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Laura S. Weiner/ whose telephone number is 571-272-1294. The examiner can normally be reached on M-F (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura S Weiner/  
Primary Examiner  
Art Unit 1795

July 21, 2008